



# Income Tax Update

News and developments for tax practitioners

A publication of the Income, Sales and Special Taxes Division


Cory Fong  
Tax Commissioner

## 2005 legislative rundown

This newsletter provides a summary of legislation affecting income and financial institution taxes passed by the 2005 North Dakota Legislature. If a legislative bill also contained changes affecting areas of the law not related to income and financial institution taxes, the summary only covers the tax portions of the bill.

### Inside this issue:

- HB 1041 - Retroactive application of Servicemembers Civil Relief Act of 2003 ..... 1
- HB 1052 - Long-term capital gain exclusion ..... 2
- HB 1107 - Participation in Treasury Offset Program ..... 2
- HB 1108 - New addition adjustments and tax rate decrease for corporations ..... 2
- HB 1144 - Withholding from ND lottery winnings ..... 2
- HB 1145 - Repeal of separate filing requirement for certain married persons filing a joint federal return ..... 2
- HB 1314 - Geothermal, solar, and wind energy device income tax credit..... 3
- HB 1474 - New deduction for human organ donation ..... 3
- SB 2032 - Seed capital, venture capital, and small business investment tax credits ..... 3
- SB 2045 - Withholding by passthrough entities ..... 5
- SB 2103 - Income tax refund offset program..... 5
- SB 2132 - Refund claim based on unconstitutional law..... 5
- SB 2140 - Miscellaneous technical changes ..... 6
- SB 2146 - Exemption of state bonus payments to resident military servicemembers ..... 6
- SB 2158 - New financial institution tax credit ..... 6
- SB 2217 - Two new biodiesel fuel income tax credits ..... 6
- SB 2281 - Ag commodity processing facility investment tax credit ..... 7
- SB 2362 - Deduction for Guard and Reserve members called to federal active duty ..... 8
- SB 2391 - New individual income tax credit for gifts ..... 9

For the text, bill status reports, and other pertinent information on any of the bills, go to the North Dakota Legislative Council's Web site at <http://www.state.nd.us/lr>. 

### HB 1041 - Retroactive application of Servicemembers Civil Relief Act of 2003

A new provision was added to the individual income tax law to retroactively recognize the provisions of the Servicemembers Civil Relief Act of 2003 (P.L. 108-189; 50 U.S.C. 501 et seq.) for the 2001 and 2002 tax years. Section 511 of the federal law prohibits a state from using the military pay of a nonresident serving in the U.S. armed forces in the calculation of the state's income tax on any non-military income of the nonresident (or the nonresident's spouse) that is taxable by the state. This federal law only affects Form ND-1 (Main Method). A claim for refund of an overpayment of tax attributable to this federal law for the 2001 and 2002 tax years may be filed within the time periods allowed by North Dakota income tax law. If the time periods for filing a claim for refund expire before August 1, 2005 (the date this bill takes effect), a claim for refund may be filed on or before April 15, 2006.

**Note:** This change in the law was necessary because the Office of State Tax Commissioner had previously determined that the federal law only applied to 2003 and subsequent tax years. If applicable, enter the nonresident's military pay on line 6 of the amended Form ND-1 filed for the 2001 and 2002 tax years.

**Statutory change:** Created a new subdivision to N.D.C.C. § 57-38-40(1).

**Effective date:** Taxable years beginning after December 31, 2000, and before January 1, 2003, and is ineffective after that. 



Office of  
State Tax Commissioner  
600 E Blvd Ave, Dept 127  
Bismarck ND 58505-0599

[ndtaxdepartment.gov](mailto:ndtaxdepartment.gov)  
[taxinfo@state.nd.us](mailto:taxinfo@state.nd.us)  
[www.discovernd.com](http://www.discovernd.com)

***"In the case of a nonresident of ND, only long-term capital gains allocated to, and subject to tax in, ND are eligible for the exclusion."***

## **HB 1052 - Long-term capital gain exclusion**

The individual income tax law governing the tax calculation on Form ND-1 (Main Method) was changed to provide that the 30 percent long-term capital gain exclusion is allowed only for long-term capital gains allocated to North Dakota. All long-term capital gains that are recognized while a resident of North Dakota, regardless of the location of the property, are eligible for the exclusion. In the case of a nonresident of North Dakota, only long-term capital gains allocated to, and subject to tax in, North Dakota are eligible for the exclusion.

**Statutory change:** Amended N.D.C.C. § 57-38-30.3(2)(d).

**Effective date:** Taxable years beginning after December 31, 2004. 

## **HB 1107 - Participation in Treasury Offset Program**

A new provision was added to the law governing the powers and duties of the tax commissioner authorizing the tax commissioner to participate in the Treasury Offset Program. This is a debt collection program administered by Financial Management Services (FMS), a bureau of the U.S. Department of the Treasury, which is responsible for issuing federal income tax refunds. Under this program the Office of State Tax Commissioner may submit past-due, legally enforceable state income tax debts to FMS to be offset by the debtor's federal income tax refund.

**Statutory change:** Created a new subsection 16 to N.D.C.C. § 57-01-02.

**Effective date:** August 1, 2005. 


## **HB 1108 - New addition adjustments and tax rate decrease for corporations**

Effective for taxable years beginning after December 31, 2004, two new addition adjustments to federal taxable income were added to the corporation income tax law. In calculating North Dakota taxable income, federal taxable income must be increased by the following:

- Amount of the U.S. production activities income deducted under I.R.C. § 199 in calculating federal taxable income.
- Amount of extraterritorial income excluded under sections 101(d), 101(e), and 101(f) of the American Jobs Creation Act of 2004 (P.L. 108-357). This adjustment only applies to the 2005 and 2006 tax years.

Effective for taxable years beginning after December 31, 2006, the corporation income tax law was changed to reduce the top tax rate from 7 percent to 6.5 percent.

**Statutory change:** Created two new subdivisions to N.D.C.C. § 57-38-01.3(1) and amended N.D.C.C. § 57-38-30(1)(e).

**Effective date:** See above summary of bill. 

## **HB 1144 - Withholding from North Dakota lottery winnings**

A new provision was added to the income tax law requiring the Lottery Division of the North Dakota Attorney General's Office to withhold income tax at the rate of 5.54 percent from lottery winnings totaling more than \$5,000 in a single transaction.

**Statutory change:** Created a new section to N.D.C.C. ch. 57-38.

**Effective date:** March 9, 2005. 

## **HB 1145 - Repeal of separate filing requirement for certain married persons filing a joint federal return**

Under the individual income tax law, the exception to the joint filing requirement in the case of married persons having different states of legal residence was repealed. Under prior law, Schedule SF had to be prepared and attached to the return if the exception applied. This change in the law means

that all married persons who file a joint federal income tax return must file a joint North Dakota income tax return, regardless of their respective residency statuses. In the case of married persons filing a joint return, where one spouse is a full-year resident of North Dakota and the other spouse is a nonresident of North Dakota for part or all of the year, either Schedule ND-1NR (if Form ND-1 is used) or Schedule 3 (if Form ND-2 is used) must be completed on a joint basis to calculate the tax on the joint return. The full-year resident spouse must report all items of income, gain, and loss in Column B of Schedule ND-1NR or Column B, Part 2, Schedule 3. The spouse who is a nonresident of North Dakota for part or all of the year must report only those items of income, gain, and loss derived from sources in North Dakota in Column B of the applicable schedule.

***Note:** Because of this change in the law, Schedule SF no longer applies starting with the 2005 tax year. As to the proper residency status to check on Form ND-1 or Form ND-2, the necessary changes to the return to integrate this law change have not yet been determined.*

**Statutory change:** Amended N.D.C.C. §§ 57-38-30.3(1) and 57-38-31(2).

**Effective date:** Taxable years beginning after December 31, 2004. 

### **HB 1314 - Geothermal, solar, and wind energy device income tax credit**

The income tax law governing the geothermal, solar, and wind energy device income tax credit was changed to provide that if a corporation eligible for the credit is a member of a group of corporations filing a consolidated North Dakota return using the combined reporting method, the credit may be offset against the consolidated tax liability (as opposed to applying it against just the tax liability of the corporation eligible for the credit). In addition, any taxpayer eligible for the credit may carry an unused credit forward for five tax years.

**Statutory change:** Created two new subsections to N.D.C.C. § 57-38-01.8.

**Effective date:** Taxable years beginning after December 31, 2004. 

### **HB 1474 - New deduction for human organ donation**

This bill created a new individual income tax deduction of up to \$10,000 of the eligible costs attributable to the donation of a human organ by the taxpayer or the taxpayer's dependent. Eligible costs means (1) lost wages not compensated for by sick pay and (2) unreimbursed medical expenses that are not deducted in calculating federal taxable income. If the taxpayer itemizes deductions, eligible medical expenses are those not allowed because of the 7.5 percent limitation based on adjusted gross income. If the taxpayer does not itemize, eligible medical expenses are all medical expenses that would have been allowed as a deduction under federal income tax law had the taxpayer itemized. This deduction is allowed on Form ND-1 (Main Method) and Form ND-2 (Optional Method).

**Statutory change:** Created a new subdivision to N.D.C.C. §§ 57-38-01.2(1) and 57-38-30.3(2).

**Effective date:** Taxable years beginning after December 31, 2004. 

### **SB 2032 - Seed capital, venture capital, and small business investment tax credits**

This bill makes a variety of changes to North Dakota law, including changes to the seed capital, venture capital, and small business investment tax credits.

Effective for taxable years beginning after December 31, 2004, the following changes have been made to the seed capital investment tax credit law:

- The definition of the type of business eligible to participate in the program was changed to specifically exclude an agricultural commodity processing facility and a real estate investment

***"This change in the law means that all married persons who file a joint federal income tax return must file a joint North Dakota income tax return, regardless of their respective residency statuses."***

**"For investments made after Dec. 31, 2004, the amount of tax credits allowed for all investments made in all qualified businesses is limited to \$2.5 million per calendar year."**

trust. (Note: This change means that an agricultural commodity processing facility is no longer eligible to participate in the seed capital investment tax credit program, even if it was certified for the program prior to 2005. However, this type of business may be eligible for the agricultural commodity processing facility investment tax credit program under N.D.C.C. ch. 57-38.6. See SB 2281 later in this newsletter for more information.)

- A new condition was added to the qualifications a business must satisfy to participate in the program. For businesses first certified on or after January 1, 2005, the business must now show that it relies on innovation, research, or the development of new products and processes in its plans for growth and profitability.
- Eligibility for the tax credit was expanded to include a regular ("C") corporation, trust, and a passthrough entity such as an S corporation or a limited liability company treated like a partnership. In the case of a passthrough entity, the tax credit must be passed through to the entity's owners based on their respective ownership interests.
- The minimum amount of \$5,000 that must be invested by a taxpayer in a tax year to qualify for the tax credit was removed.
- The provision requiring the investment to be at risk in the business before it is eligible for the tax credit was clarified by adding additional language stating that investment monies placed in an escrow account are not eligible for the credit. In other words, monies placed in escrow do not constitute an eligible investment in the business until the date the monies are paid out of escrow and are available to the business for its use.
- The provision governing the tax year in which the tax credit must be claimed was clarified to provide that the tax credit must be claimed first in the tax year in which the payment is received by the business. In the case of monies placed in escrow, this occurs when the monies are paid out of escrow and are available to the business for its use.
- For investments made after December 31, 2004, in a business first certified as a qualified business after December 31, 2004, the amount of investments made in the qualified business that is eligible for the tax credit is limited to \$500,000. This is a lifetime limit.
- For investments made after December 31, 2004, the amount of tax credits allowed for all investments made in all qualified businesses is limited to \$2.5 million per calendar year.


**Retroactive relief for certain 2004 investments.** This bill also provides retroactive relief to certain investors whose investments made in 2004 did not qualify for the seed capital investment tax credit solely because of the \$2.5 million limit on tax credits allowed under the program. The relief provided by this bill applies only to those investors who invested in qualified businesses other than agricultural commodity processing facilities (*see note below*). The relief consists of a tax credit equal to 45 percent of their 2004 investment, up to a maximum investment of \$250,000. No credit is allowed if the aggregate amount invested in 2004 was less than \$5,000. This retroactive relief credit must be claimed first on the 2004 income tax return. No more than one-fourth of this credit may be claimed in any tax year. If the credit exceeds the tax liability for 2004, the unused portion of the credit may be carried forward for five tax years. ***Qualified businesses and their investors affected by this retroactive provision in the bill will be notified by the Office of State Tax Commissioner and given instructions on how to claim the credit.***

**Note:** The legislature provided similar relief, but at a rate of 30 percent, for investments made in those businesses certified for the seed capital investment tax credit that are agricultural commodity processing facilities. See "Retroactive relief for certain 2004 investments" in the summary of SB 2281 in this newsletter.

Effective on August 1, 2007, this bill also repeals the venture capital investment tax credit law under N.D.C.C. ch. 10-30.1 and the small business investment company investment tax credit law under N.D.C.C. 10-30.2. In conjunction with this repeal, the deduction allowed to individuals on Form ND-2 (Optional Method) for up to \$5,000 (\$10,000 on a joint return) of an investment in a venture capital corporation is also repealed, effective for taxable years beginning after December 31, 2008.



**Statutory change:** Created a new section to N.D.C.C. ch. 57-38.5; amended N.D.C.C. §§ 57-38-01.2(1), 57-38-71(1), 57-38.5-01, 57-38.5-02, 57-38.5-03, 57-38.5-04, and 57-38.5-05; and repealed N.D.C.C. chs. 10-30.1 and 10-30.2.

**Effective date:** See above summary of bill. 

### **SB 2045 - Withholding by passthrough entities**

A new provision was added to the income tax law requiring a partnership, S corporation, trust, or limited liability company (treated like a partnership) to withhold income tax from the distributive shares of income of its owners or beneficiaries who are nonresident individuals. Tax must be withheld at the highest individual income tax rate under N.D.C.C. § 57-38-30.3 (which governs the Form ND-1 provisions). Currently, that rate is 5.54 percent. If a distributive share of income is passed through to another passthrough entity, the passthrough entity receiving the distributive share is also subject to the withholding requirement. This withholding requirement does not apply if (1) the distributive share of income is less than \$1,000, (2) the distributive share of income is not subject to North Dakota income tax, (3) the nonresident owner or beneficiary elects to include the distributive share of income in a composite return, or (4) the passthrough entity is a publicly traded partnership under Internal Revenue Code Section 7704(b). (A publicly traded partnership is one where the partners' interests in the entity are traded on the open market in a manner similar to stock in a public corporation.)

This bill also rewrites the composite filing provisions. Except for expanding the scope of the provisions to include a trust as an entity eligible to file a composite return, and to allow a nonresident individual owner or beneficiary to have income from more than one passthrough entity operating in North Dakota, the rewrite generally does not alter the conditions and procedures for composite filing currently in use.


**Statutory change:** Amended N.D.C.C. § 57-38-31.1.

**Effective date:** Taxable years beginning after December 31, 2004. 

### **SB 2103 - Income tax refund offset program**

The law governing the state income tax refund offset program was expanded by adding the state court administrator to the list of claimant agencies whose debts may be offset using individual debtors' state income tax refunds. This change allows an income tax refund to be intercepted to offset any state court-ordered fines, fees, or costs payable to the state by the taxpayer. With respect to a claim by the state court administrator, the provisions in the state income tax refund offset program regarding the debtor's ability to contest the offset do not apply. In addition, the rules of the North Dakota Supreme Court will govern a hearing requested by the spouse of a debtor to obtain part or all of a refund on a joint return that was offset against the debtor's court costs.

**Statutory change:** Amended N.D.C.C. §§ 57-38.3-02(1), 57-38.3-05, and 57-38.3-06.

**Effective date:** August 1, 2005. 

### **SB 2132 - Refund claim based on unconstitutional law**

The law governing the powers and duties of the tax commissioner was changed to add a new provision relating to claims for credit or refund based on the unconstitutionality of the law. With respect to taxes (other than property taxes) paid under Title 57 of the North Dakota Century Code, any claim for credit or refund of the tax based upon a claim that the tax or the law is unconstitutional must be made within 180 days of the due date of the return or payment of the tax, whichever occurs first. For a tax paid before January 1, 2005, a claim for credit or refund that is not filed before July 1, 2005, is specifically denied by the statute.

**Statutory change:** Created a new section to N.D.C.C. ch. 57-01.

**Effective date:** Tax returns filed or tax payments made after December 31, 2004. 

---

***"If a distributive share of income is passed through to another passthrough entity, the passthrough entity receiving the distributive share is also subject to the withholding requirement."***

---

**"... financial institutions that are members of a unitary group and conduct 100 percent of their business in North Dakota must file a combined report."**

## **SB 2140 - Miscellaneous technical changes**

The following technical changes were made to the income and financial institution tax laws:

- The financial institution tax law was changed to provide that financial institutions that are members of a unitary group and conduct 100 percent of their business in North Dakota must file a combined report. This change takes effect on August 1, 2005.
- In the income tax law governing the time periods for audit, the provision providing for a two-year time period in which to audit an amended return was expanded to make it applicable to an amended return filed because of an overstatement of tax in excess of 25 percent. This change is effective for amended returns filed after December 31, 2004.
- The income tax law governing the apportionment and allocation of income of multistate businesses was changed to remove obsolete language pertaining to financial organizations and the performance of personal services by individuals. The apportionment and allocation provisions that apply to multistate corporations also apply to individuals and financial organizations that conduct business on a multistate basis. This change takes effect on August 1, 2005.

**Statutory change:** Amended N.D.C.C. §§ 57-35.3-12, 57-38-38(9), 57-38.1-01, and 57-38.1-02.

**Effective date:** See above summary of bill. 

## **SB 2146 - Exemption of state bonus payments to resident military servicemembers**

This bill provides for the payment of a bonus (or "adjusted compensation") by the State of North Dakota to a resident who is either (1) a member of an active duty component of the U.S. armed forces and receives the expeditionary medal or campaign badge for service after December 5, 1992, or (2) a member of the National Guard or U.S. armed forces reserve mobilized for active duty in the U.S. armed forces for more than thirty days. The bonus is exempt from federal and North Dakota income taxes.

***Note:** All questions regarding eligibility for the state payment and how to apply for it should be directed to the Adjusted Compensation Division, North Dakota Adjutant General's Office, P.O. Box 5511, Bismarck, ND 58506-5511; Phone-(701) 333-3008. The application form is available on the Internet at <http://www.guard.bismarck.nd.us/>. For the exemption from federal income tax, see Revenue Ruling 68-158.*


**Statutory change:** The provisions of the bill have not yet been codified. Created a new subdivision to N.D.C.C. § 57-38-30.3(2).

**Effective date:** Taxable years beginning after December 31, 2004. 

## **SB 2158 - New financial institution tax credit**

A new financial institution tax credit was created for making a contribution to fund a tuition scholarship for participation in the Rural Leadership North Dakota Program conducted through the North Dakota State University Extension Service. A contribution may be earmarked for use by a designated recipient. The credit is equal to the lesser of (1) fifty percent of the aggregate amount of contributions made during the taxable year, (2) 5.7 percent of the tax before all credits, or (3) \$2,500.

**Statutory change:** Created a new subsection to N.D.C.C. § 57-35.3-05.

**Effective date:** Taxable years beginning after December 31, 2004. 

## **SB 2217 - Two new biodiesel fuel income tax credits**

The following two new income tax credits were created:

- A fuel supplier (wholesaler) licensed under North Dakota law who blends biodiesel fuel is entitled to an income tax credit equal to five cents for each gallon blended during the tax year. To qualify, the biodiesel fuel must have at least a five percent blend (which is known as "B5"). If the credit exceeds the tax liability, the unused portion of the credit may be carried forward for five taxable years.

- A fuel seller (retailer) who incurs costs after December 31, 2004, to adapt or add equipment to a facility licensed under North Dakota law to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel by volume is entitled to an income tax credit. The credit is equal to ten percent of the seller's direct costs incurred to adapt or add the equipment. The credit is allowed in each of five tax years, beginning with the tax year in which the seller begins selling the eligible biodiesel fuel. The portion of the credit not used in each year may be carried forward for five taxable years. A seller may claim no more than \$50,000 in credits for all tax years. Eligible costs incurred before the taxable year in which sales begin may be included in the calculation of the credit.

With respect to both of the above tax credits, "biodiesel fuel" means fuel meeting the specifications adopted by the American society for testing and materials. If the supplier or seller operates in the form of a partnership, S corporation, or a limited liability company treated like a partnership, the credits must be passed through to the partners, shareholders, or members in proportion to their respective interests in the entity. If the taxpayer claiming either or both credits is an individual, the credits are allowed on both Form ND-1 (Main Method) and Form ND-2 (Optional Method).

***Note:** This bill also provides for a new exemption from sales tax for gross receipts from the sale of equipment to a facility licensed under North Dakota law to enable the facility to sell diesel fuel containing at least two percent biodiesel fuel by volume. See the June 2005 Sales Tax Newsletter for more information.*

**Statutory change:** Created two new sections to N.D.C.C. ch. 57-38 and a new subsection to N.D.C.C. § 57-38-30.3.

**Effective date:** Taxable years beginning after December 31, 2004. 

## **SB 2281 - Ag commodity processing facility investment tax credit**

Effective for taxable years beginning after December 31, 2004, the following changes have been made to the agricultural commodity processing facility investment tax credit law:

- The definition of a "qualified business" was changed to (1) include corporations and partnerships, (2) provide that the business does not need to have an existing processing facility as long as it intends to establish one, (3) remove the requirement that commodity producers must hold the majority of ownership interests in the business, and (4) require certification by the North Dakota Securities Commissioner that the business is in compliance with North Dakota's securities laws.
- The number of businesses that may be certified as a qualified business for purposes of the agricultural commodity processing facility investment tax credit program is limited to the first ten businesses certified after December 31, 2004. However, an agricultural commodity processing facility previously certified for purposes of the seed capital investment tax credit program (but now excluded from that program because of the changes made by Senate Bill 2032) that meets the requirements of the agricultural commodity processing facility investment tax credit program is not considered when counting the first ten businesses, nor does the North Dakota Commerce Department's Division of Economic Development and Finance have to recertify the business for purposes of the agricultural commodity processing facility investment tax credit program.
- Eligibility for the tax credit was expanded to include a regular ("C") corporation and a passthrough entity such as an S corporation or a limited liability company treated like a partnership. In the case of a passthrough entity, the tax credit must be passed through to the entity's owners based on their respective ownership interests.
- The \$20,000 limitation on the amount invested by a taxpayer in a tax year that is eligible for the tax credit was removed.
- The amount of the tax credit that a taxpayer is eligible for in a tax year is limited to \$50,000. The total tax credit that a taxpayer is eligible for in all tax years is limited to \$250,000.
- The number of tax years over which a taxpayer may carry forward an unused tax credit was reduced from fifteen to five years.

**"The number of businesses that may be certified as a qualified business for purposes of the agricultural commodity processing facility investment tax credit program is limited to the first ten businesses certified after December 31, 2004."**

**"A member of the National Guard or the U.S. armed forces reserve who volunteers for federal active duty is eligible for the deduction provided the member is issued mobilization orders."**

- The provision requiring the investment to be at risk in the business before it is eligible for the tax credit was clarified by adding additional language stating that investment monies placed in an escrow account are not eligible for the credit. In other words, monies placed in escrow do not constitute an eligible investment in the business until the date the monies are paid out of escrow and are available to the business for its use.
- The provision governing the tax year in which the tax credit must be claimed was clarified to provide that the tax credit must be claimed first in the tax year in which the payment is received by the business. In the case of monies placed in escrow, this occurs when the monies are paid out of escrow and are available to the business for its use.

**Retroactive relief for certain 2004 investments.** This bill also provides retroactive relief to certain investors whose investments made in 2004 did not qualify for the seed capital investment tax credit solely because of the \$2.5 million limit on tax credits allowed under that program. The relief provided by this bill applies only to those investors who invested in agricultural commodity processing facilities that were certified for purposes of the seed capital investment tax credit under N.D.C.C. ch. 57-38.5 (*see note below*). The relief consists of a tax credit equal to 30 percent of their 2004 investment, up to a maximum investment of \$250,000. No credit is allowed if the aggregate amount invested in 2004 was less than \$5,000. This retroactive relief must be claimed first on the 2004 income tax return. No more than one-fourth of this tax credit may be claimed in any tax year. If the credit exceeds the tax liability for 2004, the unused portion of the credit may be carried forward for five tax years. ***Qualified businesses and their investors affected by this retroactive provision in the bill will be notified by the Office of State Tax Commissioner and given instructions on how to claim the credit.***

**Note:** The legislature provided similar relief, but at a rate of 45 percent, for investments made in businesses other than agricultural commodity processing facilities that were certified for the seed capital investment tax credit program. See "Retroactive relief for certain 2004 investments" in the summary of SB 2032 in this newsletter.

**Statutory change:** Created a new subsection to N.D.C.C. § 57-38.6-03 and amended N.D.C.C. §§ 57-38.6-01, 57-38.6-02, 57-38.6-03, and 57-38.6-04.


**Effective date:** See above summary of bill. 

## **SB 2362 Deduction for Guard and Reserve members called to federal active duty**

The individual income tax law governing the deduction currently allowed to a member of the National Guard or the U.S. armed forces reserve called to federal active duty was changed to clarify that the deduction is allowed only to those members who are "mobilized" under Title 10 of the U.S. Code. For this purpose, "mobilized" or "mobilization" refers to the process by which the U.S. Department of Defense brings the U.S. armed forces and any of its reserve components to a state of readiness for war or other national emergency. A member of the National Guard or the U.S. armed forces reserve who volunteers for federal active duty is eligible for the deduction provided the member is issued mobilization orders. Take note that not all service under Title 10 of the U.S. Code is eligible for the deduction. For example, Active Guard and Reserve (AGR) or National Guard Bureau tours for which the member volunteers are not eligible for the deduction because this service is not part of a mobilization for war or national emergency.

**Note:** To determine whether a National Guard or U.S. armed forces reserve member has been mobilized for federal active duty, the member's orders must be examined. Look for the term "mobilization" in the orders.

**Statutory change:** Amended N.D.C.C. §§ 57-38-01.2(1)(u) and 57-38-30.3(2)(g).

**Effective date:** Taxable years beginning after December 31, 2004. 



## SB 2391 - New individual income tax credit for gifts

A new individual income tax credit was created for making a planned gift to a qualified North Dakota nonprofit organization. A “qualified North Dakota nonprofit organization” is an organization that is tax-exempt under Section 501(c) of the Internal Revenue Code, has an established business presence or situs in North Dakota, and is an organization to which contributions would qualify as a charitable contribution deduction for federal income tax purposes. A “planned gift” is an irrevocable contribution that qualifies as a federal charitable contribution deduction and is made using one of the following techniques:

- Charitable remainder unitrust or charitable remainder annuity trust. In addition to federal income tax requirements, the trust agreement must contain a provision prohibiting the trust from terminating and the beneficiaries’ interests from being assigned or contributed to the qualified North Dakota nonprofit organization any earlier than the beneficiaries’ date of death or five years after the date of the contribution.
- Pooled income fund trust.
- Charitable lead unitrust or charitable lead annuity trust.
- Charitable gift annuity or deferred charitable gift annuity. In addition to federal income tax requirements, the annuity agreement must contain a provision prohibiting the interest of the annuitant or annuitants in the gift annuity from being assigned to the North Dakota nonprofit organization any earlier than the date of death of the annuitant or annuitants or five years after the date of the contribution. In the case of a deferred charitable gift annuity, the payment of the annuity must begin within the life expectancy of the annuitant or of the joint life expectancies of multiple annuitants.
- Charitable life estate agreement.
- Donation of a paid-up life insurance policy.

The credit is equal to 20 percent of the amount allowed as a federal charitable contribution deduction, up to a maximum credit of \$5,000. The amount of the contribution upon which the credit is computed (which equals the allowable credit divided by 20 percent) must be added back to federal taxable income in computing North Dakota taxable income, but only to the extent that the contribution actually reduced federal taxable income. *(Note: This adjustment to taxable income effectively reduces the value of the credit by the amount of tax attributable to the addback amount.)* If the credit exceeds the tax liability, the unused portion of the credit may be carried forward for two taxable years. The credit is allowed on both Form ND-1 (Main Method) and Form ND-2 (Optional Method).

**Statutory change:** Created a new section to N.D.C.C. ch. 57-38, a new subdivision to N.D.C.C. §§ 57-38-01.2(1) and 57-38-30.3(2), and a new subsection to N.D.C.C. § 57-38-30.3.

**Effective date:** Taxable years beginning after December 31, 2004, and gifts made after July 31, 2005. 

---

***"A new individual income tax credit was created for making a planned gift to a qualified North Dakota nonprofit organization."***

---

**OFFICE OF STATE TAX COMMISSIONER**

600 E. Boulevard Ave., Dept. 127  
Bismarck, ND 58505-0599

PRESORTED  
STANDARD  
U.S. POSTAGE  
**PAID**  
BISMARCK ND  
PERMIT NO. 189

---

**Where to reach us if you have questions or need information...**

**Phone**  
*Individual income tax..... 701-328-3450*  
*Corporation income tax..... 701-328-2046*  
*Income tax withholding ..... 701-328-3125*  
*Commissioner's office ..... 701-328-2770*

**E-mail**  
*individualltax@state.nd.us*  
*corptax@state.nd.us*  
*withhold@state.nd.us*  
*taxinfo@state.nd.us*

**Speech or hearing impaired**  
*Call Relay ND..... 1-800-366-6888*

**Fax ..... 701-328-1942**



Office of  
State Tax Commissioner  
600 E Blvd Ave, Dept 127  
Bismarck ND 58505-0599

ndtaxdepartment.gov  
taxinfo@state.nd.us  
www.discovernd.com

**Income tax update** is a publication of the Income, Sales and Special Taxes Division, North Dakota Office of State Tax Commissioner, 600 E. Boulevard Ave. Dept. 127, Bismarck, ND 58505-0599. It is published annually at the end of the calendar year and after each legislative session in June. It is intended for tax professionals and other persons interested in developments, updates, and other information about North Dakota's income and financial institution tax laws, rules, and administrative policies.

This newsletter is available free of charge on our Web site at [www.ndtaxdepartment.gov](http://www.ndtaxdepartment.gov) or in hard copy. We offer an e-mail notification service to subscribers as soon as a new issue is placed on our Web site. To join the e-mail service, simply visit our Web site and click on "Newsletter Subscription" located on the right side of the blue bar at the top of our home page. If you prefer to receive a hard copy, contact the Income Tax Section at (701)328-3450 to be placed on our mailing list.